

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

Michael Kubayanda, Chairman;  
Ann C. Fisher, Vice Chairman;  
Mark Acton;  
Ashley E. Poling; and  
Robert G. Taub

Public Inquiry on Modification of Service  
Performance Measurement Plan

Docket No. PI2022-3

ORDER PROVIDING INSTRUCTIONS FOR IMPLEMENTATION OF MODIFICATION  
OF SERVICE PERFORMANCE MEASUREMENT PLAN, ESTABLISHING DEADLINE  
FOR REPLY COMMENTS, AND GRANTING MOTION FOR LATE ACCEPTANCE

(Issued May 20, 2022)

On April 22, 2022, the Postal Service filed a notice, pursuant to 39 C.F.R. § 3055.5, proposing revisions to its Service Performance Measurement Plan (SPM Plan) for Market Dominant products.<sup>1</sup> The Postal Service's proposed modifications include: "1) a revision to how the long haul exception impacts 'Start-the-Clock' events; 2) the inclusion of Reply Mail in the measurement of Single-Piece First-Class Letters/Cards/Flats; and 3) a revision to the critical entry time[s] (CET) applicable to Periodicals," as well as a variety of stylistic and grammatical changes. Notice at 1. On

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<sup>1</sup> United States Postal Service Notice of Filing Changes to Service Performance Measurement Plan Document, April 22, 2022 (Notice).

April 26, 2022, the Commission filed an order opening a docket to consider the proposed revisions, providing an opportunity for interested persons to provide comments, and appointing a Public Representative.<sup>2</sup>

Five sets of comments were submitted by the established deadline.<sup>3</sup> In particular, the Association of Magazine Media (MPA) has raised a concern with the Postal Service's plan to change the CET for all Periodicals not entered on Pure Carrier Route pallets to 8:00 AM. See MPA Comments at 3. The Association for Postal Commerce (PostCom) has noted that the plan to change the CET for Periodicals "go well beyond mere changes in reporting." PostCom Comments at 2. Both commenters assert that this planned change will impact many mailers by, in effect, adding an extra day to the expected service for their mailings. See MPA Comments at 3-4; PostCom Comments at 2. Therefore, MPA and PostCom argue that the planned CET change constitutes a change in service standards that is a change in the nature of postal services and will generally affect service on a nationwide or substantially nationwide basis, for which the Postal Service must request an advisory opinion under 39 U.S.C. § 3661(b). See MPA Comments at 2; see *also* PostCom Comments at 2. Additionally on May 19, 2022, the National Newspaper Association (NNA) filed comments, accompanied by a motion for late acceptance, to "join[ ] several other commenters in this docket in noting that this change is not a reporting technicality, but actually a change in service performance."<sup>4</sup>

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<sup>2</sup> Notice and Order Initiating Proceeding to Consider Modifications to Market Dominant Service Performance Measurement Plan, April 26, 2022, at 3 (Order No. 6159).

<sup>3</sup> See, e.g., Comments of MPA – The Association of Magazine Media, May 18, 2022 (MPA Comments); Comments of the Association for Postal Commerce, May 18, 2022 (PostCom Comments); Comments of the National Association of Presort Mailers, May 18, 2022; Comments of the National Postal Policy Council, May 18, 2022; Public Representative Comments, May 18, 2022.

<sup>4</sup> Comments of National Newspaper Association, May 19, 2022, at 2. Motion for Late Acceptance, May 19, 2022, at 1 (stating that delay in filing was due to "the press of business, including the absence of key individuals at National Postal Forum.") (Motion).

The Postal Service's Notice and proposed SPM Plan contain limited information concerning its planned CET change and does not include any analysis that would address the commenters' concerns.<sup>5</sup> Therefore, to facilitate its review of the planned CET change and afford participants the opportunity to address any matters raised by the comments, the Commission establishes June 3, 2022, as the deadline for filing reply comments.

Should the Postal Service intend to facilitate the completion of the Commission's review and allow for implementation of its CET change for Periodicals as planned, the Postal Service must meaningfully address the questions raised by the commenters and further described below by June 3, 2022.<sup>6</sup> Specifically, the Commission expects that the Postal Service will explain in detail why its planned CET change does not constitute "a change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis."<sup>7</sup> To the extent that the Postal Service takes the position that its planned CET change does not constitute such a change, the Postal Service shall discuss and/or distinguish relevant authority interpreting 39 U.S.C. § 3661(b), including but not limited to:

- *Buchanan v. U.S. Postal Serv.*, 508 F.2d 259, 262-63 (5th Cir. 1975) (describing the factors to be considered when determining whether 39 U.S.C. § 3661 is implicated by a given change);
- *Commonwealth of Pennsylvania v. DeJoy*, 490 F. Supp. 3d 833, 884-887 (E.D. Pa. 2020) (applying the *Buchanan* factors to operational changes made in 2020

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<sup>5</sup> See Notice at 4; Library Reference USPS-LR-PI2022-3-1, April 22, 2022, PDF file "ispm\_revplan\_red-line -4-21-22.pdf," at 48, 72.

<sup>6</sup> Any person, including the Postal Service, may file a motion for an extension of time prior to the deadline. See 39 C.F.R. § 3010.162.

<sup>7</sup> See 39 U.S.C. § 3661(b). The Commission invites any other interested party to submit comments on this question as well.

and preliminarily enjoining such changes), *order clarified*, No. CV 20-4096, 2020 WL 6580462 (E.D. Pa. Oct. 9, 2020);

- *New York v. Trump*, 490 F. Supp. 3d 225, 242-243 (D.D.C. 2020) (same), *order clarified*, No. 20-CV-2340(EGS), 2020 WL 6572675 (D.D.C. Oct. 22, 2020), *appeal dismissed*, No. 20-5352, 2021 WL 672390 (D.C. Cir. Feb. 10, 2021), and *appeal dismissed*, No. 20-5352, 2021 WL 672390 (D.C. Cir. Feb. 10, 2021), and *opinion clarified*, No. 20-CV-2340(EGS), 2021 WL 7908123 (D.D.C. Apr. 3, 2021);
- Docket No. N2006-1, Advisory Opinion Concerning a Proposed Change in the Nature of Postal Services, December 19, 2006, at 7 ¶ 2001, 9 ¶ 3003 (applying 39 U.S.C. § 3661(b) to changes in the application of standards to 3-digit ZIP Code service area origin-destination pairs);
- Docket No. N2009-1, Advisory Opinion Concerning the Process for Evaluating Closing Stations and Branches, March 10, 2010, at 11 (applying 39 U.S.C. § 3661(b) to plan to consolidate stations and branches);
- Docket No. N2012-2, United States Postal Service Request for an Advisory Opinion on Changes in the Nature of Postal Services, May 25, 2012, at 2 (acknowledging that that the scope of the changes in service resulting from the Postal Service's Post Office Structure Plan could result in "substantially nationwide" changes); and
- Docket No. N2014-1, United States Postal Service Request for an Advisory Opinion on Changes in the Nature of Postal Services, December 27, 2013, at 1 (stating that a change in the manner in which Postal Service processes mail that qualifies for a Destination Sectional Center Facility discount "arguably result[s] in a nationwide change").

Moreover, to the extent that the Postal Service takes the position that its plan to change the CET for Periodicals was previously addressed in Docket No. N2021-1, the

Commission expects that the Postal Service will identify any applicable references from Docket No. N2021-1 and explain in detail how these references apply to the plan to change the CET for Periodicals identified in Docket No. PI2022-3.

The Commission reserves for final disposition of issues, including whether the Postal Service's plan to change the CET for Periodicals constitutes a change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis under 39 U.S.C. § 3661(b), for the final order in this proceeding.

The Commission notes that, while the Postal Service did not identify in its Notice an implementation date for its proposed changes, 39 C.F.R. § 3055.5 requires that changes to its SPM Plan be submitted at least 30 days prior to planned implementation. Due to the concerns raised by MPA and PostCom, and in order to allow the Postal Service to respond to these comments, the Commission directs the Postal Service not to implement its plan to change the CET applicable to Periodicals pending issuance of a final order in this docket. This Order does not restrict the Postal Service's ability to implement the other two planned changes to the SPM Plan (concerning revisions to the long haul exception and inclusion of Reply Mail in measurement) because there have been no comments directly adverse to these proposals and both appear to be improvements over the existing SPM Plan.

Finally, the Motion filed by NNA is granted. Given that the Commission is establishing an opportunity for filing of reply comments by June 3, 2022, NNA's request to accept the filing of comments one day late does not prejudice any party.

*It is ordered:*

1. Reply comments are due June 3, 2022.
2. The Commission reserves final disposition of issues, including whether the Postal Service's plan to change the critical entry times for Periodicals constitutes a change in the nature of postal services which will generally affect service on a

nationwide or substantially nationwide basis under 39 U.S.C. § 3661(b), for the final order in this proceeding.

3. While this docket remains pending before the Commission, the Postal Service shall not proceed to implement its plan to change the critical entry times for Periodicals.
4. In order to facilitate the final resolution of the Commission's review and allow for implementation of the Postal Service's plan to change the critical entry times for Periodicals, the Postal Service must meaningfully address the questions raised by the commenters and identified in the body of this order by June 3, 2022.
5. The Motion for Late Acceptance, filed by the National Newspaper Association on May 19, 2022, is granted.
6. This docket remains pending before the Commission.

By the Commission.

Erica A. Barker  
Secretary